

January 21, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR99-0145

Dear Mr. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121396.

The Harris County District Attorney (the "district attorney") received an open records request for the prosecution files pertaining to three unrelated criminal offenses committed by the same individual. Because you have not submitted any documents pertaining to one of the offenses, which occurred in 1961, we assume that either the district attorney has released these records or that the records no longer exist.

You have submitted to this office, as responsive to the request, three documents that pertain to a 1976 offense, which you contend constitute "work product" that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. In accordance with previous rulings issued by this office, and assuming these documents were created by an attorney representing the state, we agree that these three documents contained in Exhibit A may be withheld pursuant to section 552.108(a)(3)(A).

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code¹ because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. We note that all of the remaining documents you submitted to this office were gathered by the district attorney during the course of his prosecution of the sexual assault of a child. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the district attorney has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of sexual assault of a child, this office concludes that the district attorney must withhold from the public the remaining requested records in their entirety pursuant to section 261.201 of the Family Code.

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 121396

Enclosures: Submitted documents

cc: Mr. Ken McLean
1900 North Loop West, Suite 500
Houston, Texas 77018-8120
(w/o enclosures)